Supreme Court, U.S.
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No. 01-1044

IN THE

Supreme Court of the United States

MAGIC CHEF COMPANY,

Petitioner,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner MAGIC CHEF COMPANY states that MAYTAG, INC. is its corporate parent and that no other publicly held company owns ten percent (10%) or more of MAGIC CHEF COMPANY's stock.

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INTRODUCTION

The UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD"), in its Brief in Opposition to MAGIC CHEF COMPANY'S ("MAGIC CHEF") Petition for Writ of Certiorari, raises two issues not addressed in the Petition. This Reply Brief is filed by MAGIC CHEF in accordance with Rule 15.6 of the Rules of the Supreme Court of the United States in order to address these new points.

ARGUMENT

A. The Decision of the Eleventh Circuit Is a Final Ruling on the Merits of this Case and Is Properly Subject to Certiorari Review.

On page 6 of its Brief, HUD suggests that the Court should not accept Certiorari Review, based on HUD's assertion that the holding of the Eleventh Circuit is interlocutory in nature. This position is without merit and is unsupported by the legal authority cited by HUD in its Brief.

HUD filed its initial appeal with the Eleventh Circuit following the entry of summary judgment and final judgment by the district court in favor of MAGIC CHEF. Pet. App. 13-14a. The summary and final judgments ruled in MAGIC CHEF's favor both on MAGIC CHEF's affirmative claims, as well as on HUD's counterclaims. Pet. App. 13a, 20-25a; 26a. The judgment of the District Court was clearly a final order and not interlocutory in nature.

On appeal, the Eleventh Circuit reversed the District Court's entry of judgment in favor of MAGIC CHEF and

remanded for dismissal of MAGIC CHEF's action. Pet. App. 12a. The Eleventh Circuit also directed that judgment be entered in favor of HUD on its counterclaims. *Id.* With regard to the merits of the present action, the order of the Eleventh Circuit is final in all respects. There are no substantive issues of law that remain for determination.

The only issue not decided by the Eleventh Circuit is the amount of damages, if any, that HUD might be entitled to recover on its counterclaims.[1] Therefore, the remaining "remedy" issue to be considered by the District Court is entirely unrelated to merits. Contrary to the suggestions of HUD on page 6 of its Brief, the District Court has no discretion to change the ruling of the Eleventh Circuit and any subsequent ruling of the District Court as to damages can have no bearing on MAGIC CHEF's Petition.[2]

In support of their position that review of the Eleventh Circuit's decision in the present case is premature, HUD cites

1. The Eleventh Circuit in its order states that it is remanding, in part, for ". . . a determination of appropriate remedies." Pet. App. 12a. However, in the present case, the only possible remedy available is an award of damages. The appliances at issue are long since gone and, even if they were still in MAGIC CHEF's possession, would be more than ten years old. No request for any type of equitable relief has been made by HUD. Therefore, the only remedy available would be an award of damages.

2. While HUD on page 6 of its Brief states that "The district court's resolution of the remaining remedial issues in this case could influence the Court's decision whether to grant review of the question presented in the Petition, and the pendency of those issues counsels against the review of the Petitioner's claim at this time," HUD fails to discuss or identify any manner in which the District Court's determination of the remedy, in this case damages, could possibly influence or be relevant to any of the issues raised by MAGIC CHEF's Petition.

two decisions of this Court which are clearly and easily distinguishable. HUD relies primarily on the opinion of Justice Scalia, respecting the denial of a Petition for Certiorari, in the case of *Virginia Military Institute v. United States*, 508 U.S. 946, 113 S. Ct. 2431, 124 L. Ed. 2d 651 (1993). In the *VMI* case, the United States took the position that VMI's male only admissions policy violated the Equal Protection Clause of the Fourteenth Amendment and was not substantially related to the achievement of an important government objective. *See United States v. Commonwealth of Virginia*, 976 F.2d 890 (4th Cir. 1992). The District Court ruled in favor of the Commonwealth of Virginia, finding VMI's male only admissions policy to be justified. The United States appealed to the Fourth Circuit, asserting that offering a distinctive male only education was not a legitimate State objective and therefore there was not a sufficient justification for VMI's admissions policy.

On appeal, the Fourth Circuit recognized that the male only admissions policy of VMI did provide a recognized benefit and the court did not order women to be admitted to VMI, provided that alternatives were available. However, the Fourth Circuit found that the State of Virginia, by maintaining a system of education which offered the distinctive advantages of a single sex education only to men, was in violation of the Equal Protection Clause as the State had failed to identify a legitimate purpose for the disparate treatment of the sexes. The Court remanded to the District Court for the purpose of giving the Commonwealth the opportunity to choose a course of action which would bring its policies into conformity with the Equal Protection Clause.

While the Fourth Circuit did not direct the Commonwealth to follow any specific path, it suggested that

possible options might include the admission of women to VMI, the establishment of a parallel institution or program for women, or abandoning state support of VMI. *Id.* at 900. The Fourth Circuit thereafter vacated the judgment of the District Court and then remanded the case "(1) to require the defendants to formulate, adopt, and implement a plan that conforms with the equal protection clause of the Fourteenth Amendment, (2) to establish appropriate time tables, and (3) to oversee the implementation of the plan." *Id.* In short, while the Fourth Circuit vacated the lower court's decision, no ultimate determination on the merits was made for any party. As the implementation of a remedy by the Commonwealth of Virginia and specifically the nature of the plan adopted to satisfy the Court's Fourteenth Amendment concerns would go to the very heart of the issues on appeal, the ruling of the Fourth Circuit was not ripe for certiorari review.

The opinion of Justice Scalia set forth in this Court's denial of VMI's Petition for Writ of Certiorari is consistent with the status of the Fourth Circuit's holding, as an order which did not fully determine the issues in the underlying action. *Virginia Military Institute, supra*, 508 U.S. at 946, 113 S. Ct. at 2431. This state of affairs is entirely different from the situation in the present case, where all of the merits have been decided by the Eleventh Circuit. The Eleventh Circuit not only vacated the order of the District Court, but ruled that the claims of MAGIC CHEF should be dismissed, and judgment should be entered in favor of HUD on its counterclaims. Pet. App. 12a. As all substantive matters of law have been decided, this matter is properly before the Court on a Petition for Writ of Certiorari.

Likewise, the case of *Locomotive Firemen v. Bangor & Aroostook R. Co.*, 389 U.S. 327, 88 S. Ct. 437; 19 L. Ed. 2d 560 (1967), cited both by HUD in its Brief in Opposition as well as by Justice Scalia in the *VMI* decision, demonstrates why the present Petition should properly be considered by the Court. In the *Locomotive* case, the District Court had issued a temporary restraining order, forbidding a union strike. The union thereafter struck against a number of railroads, causing the District Court to enter orders of contempt and imposing fines for violation of the Court's restraining order. The union appealed the orders of contempt to the United States Court of Appeals for the District of Columbia. *Locomotive Firemen v. Bangor & Aroostook R. Co.*, 380 F.2d 570 (D.C. Cir. 1967). While addressing certain issues on appeal, the Circuit Court remanded to the District Court on the central issue in the case; i.e. "Whether there had in fact been a contempt, and, also, if there was a contempt, whether it was of such magnitude as to warrant retention, in part or to any extent, of the coercive fine originally provided for in contemplation of an outright refusal to obey." *Locomotive, supra*, at 389 U.S. 327, 328, 88 S. Ct. 437, 438. This, again, is in stark contrast to the Petition presently before the Court, where no substantive legal issues remain for determination by the District Court.

B. The Respondent has Mischaracterized the Nature of the Underlying Action, in an Effort to Avoid a Conflict with Decisions of Other Circuits.

HUD throughout its Brief mischaracterizes and/or misapprehends both MAGIC CHEF's underlying state court action as well as the Court of Appeals' characterization of this action. Brief in Opposition, 5-9. Such a misapprehension

only underscores the critical need for certainty and consistency in this important area of private property rights.

Throughout its Brief, HUD claims that MAGIC CHEF's state court suit was an action for replevin. *Id.* This is clearly not the case. It is undisputed that Petitioner did not seek "replevin" in the ordinary sense, but was always utilizing the title-restoring provisions of Section 713.15, Fla. Stat. MAGIC CHEF was required to use the procedures in the Florida replevin statute, as required by Section 713.15, when, and only when, Respondent refused to permit MAGIC CHEF to voluntarily repossess the appliances at issue.[3] Pet. 7. Replevin was never the "end" sought but merely the procedural means by which MAGIC CHEF was required to seek recovery of its property from HUD.[4]

Accordingly, HUD's attempt to avoid the plain conflict between the Eleventh and the other circuits by characterizing the present case as a "replevin action" is misplaced. Simply stated, Petitioner is engaged in a dispute with the Government over title to property. The Eleventh Circuit's determination

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3. The remedy which MAGIC CHEF was forced to resort to as a result of HUD's failure to allow MAGIC CHEF's peaceable repossession of its appliances cannot determine the nature of the underlying action. If such a result were permitted, HUD conceivably could, by its own premeditated acts, determine the scope of sovereign immunity by transforming every 713.15 title dispute into a "replevin" action, by wrongfully refusing to allow all suppliers of unincorporated and unpaid-for materials from recovering their goods from HUD controlled projects.

4. The Eleventh Circuit in its opinion recognized that MAGIC CHEF ". . . resorted to an action for replevin . . ." in order to enforce its rights in the property at issue.

as to the parameters and applicability of Section 2410 creates substantial conflict and uncertainty in the area of private property rights as well as regarding the scope of the government's waiver of sovereign immunity.

CONCLUSION

As HUD has failed to rebut or adequately address the argument and legal authority set forth in MAGIC CHEF's Petition for Writ of Certiorari and has failed to present any legitimate reason why the Petition should not be accepted, the Petition for Writ of Certiorari should be granted by the Court.

Respectfully submitted,

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